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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair  
2025 - 2026 Regular

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**Bill No:** SB 1173                      **Hearing Date:** April 14, 2026  
**Author:** Caballero  
**Version:** March 23, 2026  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** AB

**Subject:** *Jury instructions: lesser related offenses*

## HISTORY

**Source:** California Attorneys for Criminal Justice; Californians for Safety and Justice

**Prior Legislation:** AB 2435 (Lee), failed on the Assembly Floor, 2022

**Support:** California Attorneys for Criminal Justice; California Public Defenders Association; Californians for Safety and Justice; Communities United for Restorative Youth Justice; Ella Baker Center for Human Rights; Smart Justice California

**Opposition:** California District Attorneys Association

## PURPOSE

*The purpose of this bill is to restore a criminal defendant's right to a jury instruction on lesser related offenses to the offense charged, and to permit a jury, or a judge if a jury trial is waived, to find the defendant guilty of the lesser offense if certain conditions are met.*

*Existing law* provides that after closing arguments in a criminal trial, the judge may then charge the jury, and shall do so on any points of law pertinent to the issue, if requested by either party. (Pen. Code, § 1093, subd. (f).)

*Existing law* provides that at the beginning of the trial or from time to time during the trial, and without any request from either party, the trial judge may give the jury such instructions on the law applicable to the case as the judge may deem necessary for their guidance on hearing the case. (*Ibid.*)

*Existing law* provides that in any criminal case which is being tried before the court with a jury, all requests for instructions on points of law must be made to the court and all proposed instructions must be delivered to the court before commencement of argument. (Pen. Code, § 1093.5)

*Existing law* provides that before the commencement of the argument, the court, on request of counsel, must:

- Decide whether to give, refuse, or modify the proposed instructions.

- Decide which instructions shall be given in addition to those proposed, if any.
- Advise counsel of all instructions to be given. (*Ibid.*)

*Existing law* provides that if, during the argument, issues are raised which have not been covered by instructions given or refused, the court may, on request of counsel, give additional instructions on the subject matter thereof. (*Ibid.*)

*Existing law* provides that when it appears that the defendant has committed a public offense, or attempted to commit a public offense, and there is reasonable ground of doubt in which of two or more degrees of the crime or attempted crime he is guilty, he can be convicted of the lowest of such degrees only. (Pen. Code, § 1097.)

*Existing law* defines a special verdict as that by which the jury finds the facts only, leaving judgment to the court, as specified. (Pen. Code § 1152.)

*Existing law* provides that the court must give judgment upon the special verdict as follows:

- If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment or information, or of any other offense of which he could be convicted under that indictment or information, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given.
- If the plea is a former conviction or acquittal or once in jeopardy of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal or jeopardy. (Pen. Code, § 1155.)

*Existing law* provides that whenever a defendant is convicted of a crime or attempt to commit a crime which is distinguished into degrees, the jury, or the court if a jury trial is waived, must find the degree of the crime or attempted crime of which he is guilty. Upon the failure of the jury or the court to so determine, the degree of the crime or attempted crime of which the defendant is guilty, shall be deemed to be of the lesser degree. (Pen. Code, § 1157.)

*Existing law* provides that the jury, or the judge if a jury trial is waived, may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense. (Pen. Code, § 1159.)

*This bill* provides that a jury, or a judge if a trial is waived, upon request of a defendant, may find the defendant guilty of a lesser offense, the commission of which is closely related to the offense with which the defendant is charged, if the court determines that all of the following conditions are met:

- The defendant relies on a theory of defense that is consistent with a conviction for the lesser offense.
- The evidence of the lesser offense is relevant to and admitted for the purpose of establishing whether the defendant is guilty of the charged offense.
- A basis exists, other than an unexplainable rejection of prosecution evidence, on which the jury could find the offense to be less than that charged.

*This bill* states that it is the intent of the Legislature in enacting the provision above to restore the right of a defendant to receive jury instructions on lesser related offenses as originally guaranteed by the California Supreme Court in *People v. Geiger* (1984) 35 Cal.3d.510.

## COMMENTS

### 1. Need For This Bill

According to the author:

In 1998, the California Supreme Court ruled in *People v. Birks*, that there is neither a statutory or constitutional right to have a lesser related offense presented to a jury. This decision reversed the longstanding ability of a defense attorney to request that the jury consider a lesser charge, if the facts presented at trial supported the elements of the lesser offense, but it did foreclose the possibility of restoration, but noted there is no statutory authority.

Currently, jury deliberations are limited to the charges brought by the prosecution, even when the evidence supports a different, lesser offense. At the height of the war on crime era, the *Birks Court* reduced judicial discretion to allow for lesser charges to be considered, and narrowed a defendant's ability to ask for lesser related crimes to be heard.

SB 1173 restores balance in the criminal courtroom. It allows a judge to include a lesser-related offense in jury instructions if the evidence supports it. This reform strengthens due process, supports fair outcomes, ensures that juries can consider the facts before them, and helps juries connect the evidence with the appropriate offense.

### 2. *Geiger, Birks, and Jury Instructions on Lesser Related Offenses*

Under California law, a "lesser included offense" is necessarily included in a greater offense if either the statutory elements of the greater offense, or the facts actually alleged in the accusatory pleading, include all the elements of the lesser offense, such that the greater cannot be committed without also committing the lesser.<sup>1</sup> Put simply, a lesser included offense is a crime whose elements are completely contained within a greater offense. For instance, involuntary manslaughter is a lesser included offense of murder, because murder includes all the elements of involuntary manslaughter, in addition to the element of malice on the part of the accused.<sup>2</sup> It is well-established that the trial court has a duty to instruct the jury not only on the crime with which the defendant is charged, but also on any lesser offense that is both included in the offense charged and shown by the evidence to have been committed.<sup>3</sup>

Distinct from a lesser *included* offense is a "lesser related offense," which shares similarities with the greater offense, but whose elements are not completely subsumed by it. Specifically, if a lesser offense shares some common elements with the greater offense, or if it arises out of the

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<sup>1</sup> *People v. Lohbauer* (1981) 29 Cal.3d 364, 368-69.

<sup>2</sup> *People v. Orr* (1994) 22 Cal.App.4th 780, 784. Pen. Code, § 192, subd. (b).

<sup>3</sup> *People v. Foster* (2010) 50 Cal.4th 1301, 1343; *People v. Gutierrez* (2009) 45 Cal.4th 789, 826.

same criminal course of conduct as the greater offense, but it has one or more elements that are not elements of the greater offense as alleged, then it is a lesser related offense, not a necessarily included offense.<sup>4</sup> For example, the crime of vandalism – defacing, damaging or destroying the personal property of another – is a lesser related offense to burglary, which involves the entry of a building or vehicle with the intent to commit theft or a felony, because the two offenses require similar proof and protect the same societal interest, security of property.<sup>5</sup>

As mentioned above, California law has long provided that a trial court must instruct a criminal jury on any lesser included offense if there is substantial evidence only the lesser crime was committed. In 1984, however, the California Supreme Court in *People v. Geiger* (1984) 35 Cal.3d 510 ruled that in certain circumstances, and only upon the request of the defendant, the defendant also has a right to have the jury instructed on lesser *related* offenses that bear some conceptual and evidentiary relationship to the greater offense. The *Geiger* Court rooted its reasoning in the constitutional principles requiring instruction on lesser included offenses:

The necessity for instructions on lesser offenses is founded in the defendant's 'constitutional right to have the jury determine every material issue presented by the evidence.' [...] The requirement of instructions on lesser included offenses is based on the elementary principle that the court should instruct the jury on every material question. The state has no interest in a defendant obtaining an acquittal where he is innocent of the primary offense charged but guilty of a necessarily included offense. Nor has the state any legitimate interest in obtaining a conviction of the offense charged where the jury entertains a reasonable doubt of guilt of the charged offense but returns a verdict of guilty of that offense solely because the jury is unwilling to acquit where it is satisfied that the defendant has been guilty of wrongful conduct constituting a necessarily included offense. Likewise, a defendant has no legitimate interest in compelling the jury to adopt an all or nothing approach to the issue of guilt.<sup>6</sup>

As such, the Court in *Geiger* opined that “it would be fundamentally unfair to deny the defendant the right to have the court or jury consider the ‘third option’ of convicting the defendant of the related offense,” and that the prosecution would also benefit because “some guilty defendants who would otherwise go free will be punished for a crime which they committed even though it was overlooked by a prosecutor or was not charged because the prosecutor overestimated the strength of the Peoples’ evidence.”<sup>7</sup>

Reasoning that these considerations of due process, fairness, and accuracy should apply to lesser related offenses with equal force, the Court held that, upon the defendant’s request, a trial court must instruct a jury on lesser related offenses, but only when three prerequisites are met. First, there must be some basis, other than an unexplainable rejection of the prosecution evidence on which the jury could find the offense to be less than that charged. Second, although some evidence offered by the prosecution or the defendant may indicate that the defendant committed a crime other than that charged, instructions regarding that crime need not be given “unless the evidence is also relevant to and admitted for the purpose of establishing whether the defendant is

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<sup>4</sup> *People v. Hicks* (2017) 4 Cal.5th 203, 208-09.

<sup>5</sup> *People v. Birks* (1998) 19 Cal.4th 108, 123, quoting *People v. Geiger* (1984) 35 Cal.3d 510, 523.

<sup>6</sup> *Geiger, supra*, at 519-520, quoting *People v. Modesto* (1963) 59 Cal.2d 722, 730 and *People v. St. Martin* (1970) 1 Cal.3d 524, 533.

<sup>7</sup> *Geiger, supra*, at pp. 521, 531.

guilty of the charged offense.”<sup>8</sup> Finally, the instructions must be justified by the defendant’s reliance on a theory of defense that would be consistent with a conviction for a related offense.<sup>9</sup> That is, if the defense was predicated on a complete denial of criminal culpability, or mistaken identity, a lesser related offense instruction was unnecessary.

A California criminal defendant’s right to have the jury instructed on lesser related offenses lasted until the California Supreme Court overruled its decision in *Geiger* when it handed down *People v. Birks* (1998) 19 Cal.4th 108. In *Birks*, the Court held that a defendant is not entitled to jury instructions on lesser related offenses as a matter of due process, even if he or she requests the instruction and it would have been supported by substantial evidence, and courts may not instruct concerning an uncharged lesser related crimes unless agreed to by both parties.<sup>10</sup> The Court reasoned that “the *Geiger* rule contravenes the principle of mutual fairness by giving the defendant substantially greater rights either to require, or to prevent, the consideration of lesser nonincluded offenses than are accorded to the People, the party specifically responsible for determining the charges,” and, moreover “invites the jury to convict the defendant of a crime that no party may have attempted to establish beyond a reasonable doubt.”<sup>11</sup> The Court also suggested that the *Geiger* rule may raise separation of powers issues under Article 3 of the California Constitution, but refrained from resolving such issues in its opinion.<sup>12</sup>

The *Birks* Court noted in its opinion that while the Supreme Court is the final arbiter of the meaning of the California Constitution, the Legislature is free to overturn its statutory interpretations when dissatisfied with them.<sup>13</sup> Heeding this invitation, the author proposes this bill to abrogate the holding in *Birks* and reinstate the *Geiger* rule granting defendants the right to have a jury instructed on lesser related offenses.

### 3. Effect of This Bill

California law requires the judge in a criminal case to instruct the jury after closing arguments have been concluded.<sup>14</sup> Both the prosecution and defense are permitted to request specific instructions, and the judge must determine which proposed instructions will be given prior to the commencement of argument.<sup>15</sup> In general, the court must, even in the absence of a request, instruct the jury on all general principles of law relevant to the issues raised by the evidence.<sup>16</sup> As referenced above, existing law also requires the judge to give instructions on lesser included offenses if the evidence raises a question as to whether all elements of the charged offense were present, but not when there is no evidence the offense was less than that charged.<sup>17</sup> California Penal Code section 1159 expressly provides that the jury, or the judge if a jury trial is waived may find the defendant guilty of any offense, the commission of which is necessarily included in that with which the defendant is charged. This bill, reinstating the *Geiger* rule, additionally provides that a jury, or a judge if a jury trial is waived, upon request of the defendant, may find the defendant guilty of a lesser offense, the commission of which is closely related to the offense

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<sup>8</sup> *Geiger*, at p.531.

<sup>9</sup> *Id.*

<sup>10</sup> *Birks*, at pp. 136-137.

<sup>11</sup> *Id.* at pp. 126, 132.

<sup>12</sup> *Id.* at p. 135-136.

<sup>13</sup> *Id.* at p. 117.

<sup>14</sup> Pen. Code, § 1093, subd. (f).

<sup>15</sup> Pen. Code, § 1093.5

<sup>16</sup> *People v. Blair* (2005) 36 Cal.4th. 686, 744.

<sup>17</sup> *People v. Manriquez* (2005) 37 Cal.4th 547, 587-588.

with which the defendant is charged. Per the *Geiger* ruling, the bill, prior to an instruction on a lesser related offense, requires the court to determine that all of the following conditions have been met:

- The defendant relies on a theory of defense that is consistent with a conviction for the lesser offense.
- The evidence of the lesser offense is relevant to and admitted for the purpose of establishing whether the defendant is guilty of the charged offense.
- A basis exists, other than an unexplainable rejection of prosecution evidence, on which the jury could find the offense to be less than that charged.

The *Geiger* Court acknowledged that it could not anticipate all of the circumstances in which instructions on related offenses may be requested, and that time may reveal the criteria listed above to be over- or under-inclusive, but that “in doubtful situations [...] the determinative factor should be whether the option to convict a defendant of a related offense is reasonably necessary to insure that the jury is afforded the opportunity to decide all material issues presented by the evidence in accord with the defendant's theory of the case, where denial of that opportunity might undermine the reasonable doubt standard.”<sup>18</sup> The Court in *Birks*, however, recognized *Geiger*'s apprehension as well-justified, citing to roughly a dozen cases in which “California courts have [...] grappled earnestly but uncertainly with the numerous difficulties of applying *Geiger* to the diverse facts of individual cases.”<sup>19</sup> The author and Committee should be aware of the possibility that, without additional guidance beyond that which was offered by the *Geiger* Court, the enactment of this bill may result in similar challenges for courts. Neither this bill nor the *Geiger* opinion provides a clear and specific definition for what constitutes a “related offense,” and courts will have to develop their own tests for making such a determination, likely leading to more appeals to higher courts to resolve diverging interpretations.

#### 4. Prior Legislation

This bill is nearly identical to AB 2435 (Lee) of the 2021-2022 legislative session, except that AB 2435 included a slightly different construction of the operative requirement, permitting a verdict on a lesser related offense “if all of the following conditions are met” (then listing the conditions), whereas this bill specifies that such a verdict is permissible “if the court determines that all of the following conditions are met” prior to listing the conditions. Functionally, this difference does not change the effect of the bill, as it would be up to a judge to determine whether the specified conditions were met even under AB 2435's construction of the provision. AB 2435 died on the Assembly Floor.

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<sup>18</sup> *Geiger, supra*, at pp.531-532, fn. 12.

<sup>19</sup> *Birks, supra*, at pp.131.

## 5. Argument in Support

According to the California Public Defenders Association:

SB 1173 is a measured reform that improves the accuracy and reliability of trial outcomes without impeding prosecutorial charging authority or expanding criminal liability. Under SB 1173, a lesser related offense instruction may be given only where the accused's theory is consistent with that offense, the evidence supporting it has already been admitted at trial, and the court determines there is a genuine evidentiary basis for the jury to return that verdict. These constraints ensure the instruction is available only in cases where it is grounded in the record and aligned with the defense presented.

The need for this reform arises from verdicts that do not reflect the actual conduct of an accused person. When juries are presented only with a single charged offense, even where the evidence supports a different and less serious form of culpability, they are effectively forced into an all-or-nothing choice—convict of more than the conduct requires or acquit entirely. That creates two well-recognized risks: jurors may convict of a more serious offense than the evidence supports rather than allow an accused person to go free, or they may acquit entirely where they believe some wrongdoing occurred but reject the severity of the charge. Neither outcome promotes accuracy or public confidence in the system. [...]

It is important to understand that SB 1173 does not alter the prosecution's charging authority. The bill permits the defense to request a jury instruction on a lesser related offense when supported by the evidence presented at trial. It does not create an entitlement to such an instruction. Trial courts retain full discretion to deny the request where the legal or evidentiary requirements are not met, reinforcing their traditional gatekeeping role. This approach preserves prosecutorial discretion and judicial control, while ensuring juries are not forced into all-or-nothing decisions when the evidence supports a more accurate outcome.

## 6. Argument in Opposition

The California District Attorneys Association writes:

This bill would go backwards in our approach to criminal law. It also would run afoul of the California Supreme Court's clear language noting a serious constitutional concern. This same bill, introduced four years ago (AB 2435 (Lee), 2021-2022 Sess.), failed to pass the Assembly for the same reasons it is bad policy today. The bill proposes an outdated, unconstitutional, and unworkable rule requiring courts to instruct juries on lesser related offenses.

In 1998, the California Supreme Court specifically ruled that courts shall not instruct on lesser related offenses, holding that prior opinions authorizing such a practice were simply "wrong." (*People v. Birks* (1998) 19 Cal.4th 108, 136.) This has been the law of the land in California for nearly 30 years. SB 1173 states that

the intent of the bill is to restore this “wrong” practice as authorized in *People v. Geiger* (1984) 35 Cal.3d 510, a criticized Justice Rose Bird era opinion. [...] CDAA echoes the Supreme Court’s concerns that such instructions “promotes inaccurate factfinding.” Additionally, SB 1173 in its application would lead to disparate outcomes depending on factors irrelevant to the case such judicial draw and local county practice. The current state of the law is predictable and is applied uniformly across the state.

-- END --